STATE OF MICHIGAN

IN THE SUPREME COURT

SHARDA GARG,

Plaintiff-Appellee/
Cross-Appellant,

vs.

MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES, a governmental agency of MACOMB COUNTY,

Defendant-Appellant/
Cross-Appellee.
_____/

Supreme Court No: 121361 & (64)

Court of Appeals No: 223829

Macomb Circuit Court No: 95-3319 CK

PLAINTIFF'S BRIEF ON APPEAL AS CROSS-APPELLANT

"Oral Argument Requested"

By: MONICA FARRIS LINKNER (P28147)
Attorney for Plaintiff-Appellee and
Cross-Appellant Sharda Garg
121 W. Washington St., Suite 300
Ann Arbor, MI 48104
(734) 214-0200

-and-

ALLYN CAROL RAVITZ (P19256)
Co-counsel for Plaintiff-Appellee and
Cross-Appellant Sharda Garg
PO Box 948
Walled Lake, MI 48390
(248) 960-9660

TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES

STATUTES AND COURT RULES

BASIS OF APPELLATE JURISDICTION

By Order dated April 15, 2004, this Court granted leave to appeal as cross-appellant to Plaintiff-Appellee Sharda Garg on the issue of computation of judgment interest. Specifically, the Court directed the parties to address whether plaintiff received an award of "future damages" within the meaning of MCLA 600.6013(1) which would bar prejudgment interest on that amount. Subsumed within that question is whether the trial court erred by calculating and attributing $141,150 of the damages awarded to "future damages." App. p. 4a.

. On April 23, 1998, a Macomb County jury awarded Plaintiff $250,000.00 on her complaint for retaliation under the Elliott Larsen Civil Rights Act. On August 6, 1998 the trial court issued its post-trial rulings regarding calculation of interest on Plaintiff's damages (App. p. 95a-98a). The court determined that $141,150.00 of the $250,000.00 awarded by the jury was "attributable to future damages" and therefore "interest shall run on that amount commencing as of the date of judgment," a ruling contrary to the plain and unambiguous language of the controlling statutes. The court compounded error by ruling that interest on the $56,000.00 awarded as attorney fees under the mediation rule would begin to run as of the date the mediation award was rejected, rather than as of the date the complaint was filed, also contrary to the plain and unambiguous language of the controlling statutes. The Order of Judgment entered August 17, 1998 embodies those rulings (App. p. 99a).

The Court of Appeals decision of March 29, 2002 affirmed the jury verdict and the trial court's rulings on all post-trial motions, including the "future damages" interest calculation. Garg v Macomb County Community Mental Health, unpublished opinion per curiam of the Court of Appeals decided 3-29-02 (Docket No. 223829) (App. p. 100a). Defendant filed its Application for Leave to Appeal in this Court on April 18, 2002. Plaintiff filed her Application

for Leave to Appeal as Cross-Appellant on May 9, 2002. This Court heard oral argument on the Applications on March 11, 2004, and issued its order granting leave to appeal on April 15, 2004.

STATEMENT OF QUESTIONS PRESENTED

I. **DID THE TRIAL COURT ERR IN RULING THE JURY AWARDED FUTURE DAMAGES OF $141,150, AND COMPUTING INTEREST ON THAT AMOUNT FROM THE DATE OF JUDGMENT, WHERE THOSE DAMAGES ARE NOT "FUTURE DAMAGES" WITHIN THE MEANING OF MCLA § 600.6013?**

Plaintiff/Cross-Appellant says "YES".

Defendant/Cross-Appellee says "NO".

The Trial Court and the Court of Appeals say "NO".

II. **DID THE TRIAL COURT ERR IN RULING THAT INTEREST ON THE ATTORNEY FEE OF $56,000 AWARDED UNDER THE MEDIATION RULE SHOULD RUN FROM THE DATE THE MEDIATION AWARD WAS REJECTED RATHER THAN FROM THE DATE THE COMPLAINT WAS FILED?**

Plaintiff/Cross-Appellant says "YES".

Defendant/Cross-Appellee says "NO".

The Trial Court said "NO".

The Court of Appeals did not address this issue.

STATEMENT OF FACTS

Plaintiff seeks reversal of the trial court's ruling, affirmed by the Court of Appeals, that $141,150.00 of the jury verdict was for future damages, and that interest on those "future damages" runs from the date of entry of judgment, rather than from the date the complaint was filed (App. p. 95a, 99a and 100a).

Sharda Garg is an Asian Indian, British-educated and trained as a psychologist in India. App. p. 26a-29a[1] She came to the United States having completed her Master's degree in psychology and all course work for her Ph.D. App. p. 29a. Mrs. Garg was hired by Defendant-Appellant Cross-Appellee Macomb County Community Mental Health Services ("MCCMHS") in 1978 as a Staff Psychologist-Therapist II at its Life Consultation Center ("LCC") App. p. 30a; App. p. 83a-84a. From 1983 until 1998, she repeatedly sought to advance within the organization but was never promoted. Mrs. Garg testified about the many promotions she sought but did not receive after she opposed sexual harassment by her boss, and after she complained she was being discriminated against on the basis of color/national origin. See, for example, App. p. 31a-73a. She attributed her lack of promotions to retaliation for opposing her boss' sexual harassment, discrimination on the basis of color/national origin, and /or retaliation for opposing such discrimination, all violations of the Elliott-Larsen Civil Rights Act. App. p. 100a.

Mrs. Garg testified to her wage loss and pension loss damages resulting from Defendant MCCMHS' retaliatory refusal to promote her over the years. App. p. 85a-94a. She also

---

[1]Citations are to the trial transcript. Trial commenced on April 1, 1998 and concluded April 23, 1998.

testified to the emotional damages caused by Defendant's treatment of her, which included feeling very depressed, less sociable, withdrawn, deeply hurt, shaken up, stressed out, unable to give emotionally to her husband and children, in emotional turmoil, and questioning whether she had made a mistake in coming to the United States. App. p. 74a-82a. She experienced headaches, sleeplessness, increased blood pressure, loss of appetite and weight loss, which she attributed to the emotional distress she suffered. App. p. 74a-77a, 80a-81a..

On April 23, 1998 after a lengthy trial, the jury awarded Mrs. Garg a verdict of $250,000.00 on her retaliation claim. Id. The verdict was not broken down by type of damages (i.e. "wage loss," "pension loss," "emotional distress") or past versus future damages. Judgment in the amount of $354,298.17 was entered in Mrs. Garg's favor on August 17, 1998, consisting *inter alia* of the jury's $250,000.00 verdict; the trial court's attribution of $141,150.00 of the verdict to "future damages;" interest **from the date of judgment** on the "future damages;" costs awarded under the ELCRA (MCLA § 37.2802); and attorney fees of $56,000.00 awarded under the mediation court rule with interest to run **from the date of rejection of mediation** (App. p. 99a).

Mrs. Garg argued that she was entitled to prejudgment interest on the entire amount of the judgment pursuant to the prejudgment interest statute, MCLA § 600.6013(1) and (6). Defendant MCCMHS posited that the jury verdict included an award of future wage loss and pension loss damages, that some of the damages were awarded for bodily injury, and that these elements of damages were an award of "future damages" as defined in MCLA § 600.6301. Defendant argued that plaintiff was therefore entitled to interest on the supposed "future damages" from the date of entry of judgment, **not** from the date the complaint was filed. The trial court undertook to "make, in effect, an equitable determination as to what, if any, amount should be attributed to future damages." (App. p. 96a-97a). The court reasoned:

> However, the record indicates that in closing arguments plaintiff did ask for future wage loss (i.e. $52,185.00, pension loss benefits of $73,765.00 and emotional damages of $400,000.00. It does not appear what portion, if any, of the emotional damages were for the future.
>
> * * * * *
>
> ...It is the Court's determination that $15,000.00 be attributed to future emotional damages.
>
> * * * * *
>
> ...To conclude, I find that the total sum attributable to future damages to be $141,150.00 and interest shall run on that amount commencing as of the date of judgment.

Id.

Relying only on an unpublished opinion, Hrlic v K-Mart Corporation, unpublished opinion per curiam of the Court of Appeals decided 3-27-95 (Docket No. 159191) (App. p. 106a), the trial court thus ruled interest would commence as of the date of judgment on future emotional damages, future wage loss, and future pension loss (App. p. 96a-97a). The trial court's Judgment embodies this ruling (App. p. 99a).

The Court of Appeals also concluded that interest should run only from the date of the judgment on the "future damages" portion of the award. The Court stated:

> "*** The plain language of MCL 600.6301 defines 'future damages' as damages resulting from bodily harm, sickness or disease. The instant Plaintiff testified that she suffered from headaches and high blood pressure as a result of the alleged discrimination. This clearly constituted 'bodily harm, sickness, or disease.' Therefore, the trial court correctly calculated the interest from the date of the judgment on the future damages portion of the award. We acknowledge that in Phinney [v Perlmutter, 222 Mich App 513], at 542, 562 [1997], and Paulitch v Detroit Edison Co., 208 Mich App 656, 661-663 [1995], this Court indicated that a plaintiff is entitled to prejudgment interest for future damages when the suit does not result from personal bodily injury. We find these cases sufficiently distinguishable from the instant case, however, because there was no indication in Phinney or Paulitch that the plaintiffs alleged physical manifestations resulting from discriminatory treatment."

Court of Appeals' Opinion, App. p. 104a-105a.

Based on the judgment as entered, the current value of the case is $490,226.65. (Appendix F, p 1). Had the lower court properly applied the interest statute, the current value of the case would be $552,944.50. (App. p. 112a).

Plaintiff filed her Application for Leave to Appeal as Cross-Appellant seeking review of the lower court rulings on the interest issue. This Court granted leave to appeal by Order dated April 15, 2004.

ARGUMENT

I. THE TRIAL COURT ERRED IN RULING THE JURY AWARDED FUTURE DAMAGES OF $141,150, AND COMPUTING INTEREST ON THAT AMOUNT FROM THE DATE OF JUDGMENT, WHERE THOSE DAMAGES ARE NOT "FUTURE DAMAGES" WITHIN THE MEANING OF MCLA § 600.6013.

The trial court's award of interest pursuant to the prejudgment interest statute is subject to *de novo* review as it poses a question of statutory interpretation. Morales v Auto-Owners Ins Co (After Remand), 469 Mich 487, 490, 672 NW2d 849 (2003); Haliw v Sterling Heights, 464 Mich 297, 302 (2001).

Relying only on an unpublished opinion of the Court of Appeals, Hrlic v K-Mart Corporation, App. p. 106a, the trial court agreed with Defendant MCCMHS, ruling that damages awarded for future wage loss, pension loss, and emotional distress in a civil rights case are "future damages" on which interest begins to run only as of the date of entry of judgment (App. p. 95a). The trial court imposed its own "equitable determination" of what portion of the undivided $250,000.00 jury verdict was for future wage loss, pension loss, and future emotional distress. Thus, the trial court awarded interest only from the date of judgment on $141,150.00, representing $52,185 for future wage loss, $73,765 for future pension loss, and $15,000 attributed by the court to future emotional distress. App. p. 107a-108a.

MCLA § 600.6013 provides, in pertinent part:

> (1) Interest shall be allowed on a money judgment recovered in a civil action, as provided in this section. However, for complaints filed on or after October 1, 1986, interest shall not be allowed on **future damages** from the date of filing the complaint to the date of entry of the judgment. As used in this subsection, "**future damages**" means that term as defined in section 6301.

* * *

> (6) ...for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action **shall** be calculated at 6-month intervals **from the date of filing the complaint**....Interest under this subsection shall be calculated on the entire amount of the money judgment, including attorney fees and other costs..... [emphasis added].

"Future damages" is defined in MCLA § 600.6301(a) as:

> ...damages arising from **personal injury** which **the trier of fact** finds will accrue after the damage findings are made and includes damages for medical treatment, care and custody, loss of earnings, loss of earning capacity, loss of bodily function, and pain and suffering. [emphasis added].

"Personal injury" is, in turn, defined in MCLA § 600.6301(b) as "bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm."

This Court has stated, "A fundamental principle guiding this Court is that a clear and unambiguous statute leaves no room for judicial construction or interpretation." Coleman v Gurwin, 443 Mich 59, 65 (1993). Most recently, in a case deciding that interest continues to accrue while a case is on appeal pursuant to MCLA 600.6013, the Court reiterated:

> The cardinal principle of statutory construction is that courts must give effect to legislative intent...If the Legislature's intent is clearly expressed, no further construction is permitted....Under such circumstances, a court is prohibited from imposing a "contrary judicial gloss" on the statute....

Morales v Auto-Owners, supra, 469 Mich at 490 (citations omitted).

First, nothing in the interest statute permits the trial court to "equitably determine" what portion of a jury's verdict was intended to be "future damages." In fact, the definition of future damages refers to personal injury damages which the **trier of fact** finds will accrue after the damages finding is made. MCLA § 600.6301(a). The trier of fact was the jury, not the trial

judge. The trial judge had no way to know how much, if anything, the jury intended to award for discrete items of damages such as future wage loss, pension loss, or future emotional distress. Plaintiff's closing argument, from which the court quoted, is certainly not determinative on this question.

Having improperly attributed particular amounts to future wage loss, pension loss, and future emotional distress, the trial court ruled that these items were "future damages," as to which interest runs from the date of the judgment. MCLA § 600.6013(1), supra. However, by statute "future damages," encompasses only "damages arising from personal injury ..." MCLA § 600.6301(a), supra. None of Mrs. Garg's damages arise from "personal injury" which in turn is defined as "bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm." MCLA § 600.6301(b). Rather, her damages arose from Defendant's unlawful retaliation in violation of the ELCRA. While some of those damages may include future lost wages, future pension loss, and future emotional distress, the fact that those damages arose from a civil rights violation rather than a personal injury means that the proscription of MCLA § 600.6013(1) as to interest on "future damages" does not apply.

In Paulitch v Detroit Edison Co, 208 Mich App 656 (1995), *lv gtd* 451 Mich 899 (1996), *vacated and lv den* 453 Mich 970 (1996), the jury awarded plaintiff $359,000 for defendant's failure to promote him on the basis of his age in violation of the Elliott-Larsen Civil Rights Act. The trial court denied plaintiff's motion for prejudgment interest. The Court of Appeals reversed:

> Plaintiff argues that the reference to future damages [in MCLA § 600.6013] is not applicable to this case because future damages, as defined in § 6301, must result from a personal bodily injury. MCLA § 600.6301; MSA 27A.6301. **Because this case involves a civil rights violation, plaintiff contends he is entitled to prejudgment interest on the money judgment from the date of the filing of the complaint, as provided by § 6013. We agree.**

208 Mich App, 661.

In Paulitch, the Court of Appeals interpreted the definition of "future damages" as follows:

> "We find there can be no interpretation of this plain language other than that a plaintiff is entitled to prejudgment interest when the suit does not result from a personal bodily injury."

208 Mich App at 662-663.

Phinney v Perlmutter, 222 Mich App 513 (1997) involved successful claims of fraud and misrepresentation and retaliation under the Whistleblower's Protection Act, MCLA § 15.362. The Court of Appeals held that interest on all damages, including those damages sustained in the future, should run from the date of filing:

> Accordingly, we remand with instructions that the trial court recalculate prejudgment interest from the date of the filing of the first amended complaint [the first time Adelman, the W.P.A. defendant, was named as a defendant]. In addition, as held in issue XII, **plaintiff is entitled to prejudgment interest for future damages when the suit does not result from personal bodily injury. Paulitch, supra, pp 662-663.**

222 Mich App at 562.

The case at bar is not a "personal injury" case. This is not a case in which Plaintiff's damages involve "bodily harm, sickness, disease, death, or emotional harm resulting from bodily harm." MCLA § 600.6301(b), supra (emphasis added). The courts below focused on Mrs. Garg's testimony that she experienced physical symptoms **as a result of** her emotional distress (headache, weight loss, elevated blood pressure), which is the exact reverse of the statutory definition of "emotional harm resulting from bodily harm." The Court of Appeals' interpretation of these provisions is not only contrary to that Court's prior decisions, but fails to give effect to the entirety of the statutory language. People v Morey, 461 Mich 325, 330 (1999).

Although Mrs. Garg attributed her emotional distress directly to the manner in which Defendant treated her, and not to any physical injury she had suffered, the trial court concluded "the emotional harm resulted from a bodily harm" because Mrs. Garg testified to such

manifestations of her emotional distress as stomach problems, sleeplessness, erratic weight gain and loss, and high blood pressure (App. p. 96a). This conclusion is quite remarkable in that there was no medical testimony offered by either side, and no testimony at all that Mrs. Garg's emotional distress was **caused by** any bodily harm; in fact, Mrs. Garg testified that the opposite is true: her emotional distress caused her physical problems (App. p. 81a-82a).

The Court of Appeals focused on Plaintiff's testimony "that she suffered from headaches and high blood pressure as a result of the alleged discrimination," and concluded that this "clearly constituted 'bodily harm, sickness, or disease,'" within the meaning of MCLA § 600.6301(b) (App. p. 104a). This conclusion splices off a mere portion of the definition of "personal injury" from MCLA § 600.6301(b), which requires that in order to constitute "future damages" within the meaning of MCLA § 600.6301(a), the "personal injury" must "**resul[t] from** bodily harm." MCLA § 600.6301(b), supra. The phrase, "resulting from bodily harm," relates to everything which precedes it within MCLA § 600.6301(b).

The Court of Appeals, realizing its obligation to follow its own prior, published opinions, MCR 7.215(I), sought to distinguish both Paulitch and Phinney, supra on the ground that in neither of those did "the plaintiffs alleg[e] physical manifestations resulting from discriminatory treatment" (App. p. 105a.) However, Phinney "presented two expert witnesses who testified that [she] suffered from posttraumatic stress disorder." 222 Mich App 513, 559. It is well known that this disorder often has physical manifestations, and that was certainly true in Phinney.[2]

Despite Phinney's physical symptoms resulting from emotional distress, the Court of Appeals properly refused application of the "future damages" definition to that non-personal injury case. Both Phinney and Paulitch correctly interpreted the prejudgment interest statute,

---

[2] Although not cited in the opinions, the briefs and record show that Dr. Phinney, as a result of her posttraumatic stress disorder, had trouble sleeping, vomited repeatedly, cried uncontrollably, received various medications because she was shaking and trembling and found herself unable to care for her infant children, and that her board-certified, treating psychiatrist testified that these physical reactions are characteristic of posttraumatic stress disorder.

applying the clear, unambiguous, statutory language employed by the Legislature. This Court should do the same in the case at bar.

II. THE TRIAL COURT ERRED IN RULING THAT INTEREST ON THE ATTORNEY FEE OF $56,000 AWARDED UNDER THE MEDIATION RULE SHOULD RUN FROM THE DATE THE MEDIATION AWARD WAS REJECTED RATHER THAN FROM THE DATE THE COMPLAINT WAS FILED.

Plaintiff argued that interest should be calculated on the entire award, including attorney fees, from the date of filing the complaint. Brief in Support of An Award of Interest on Plaintiff's Judgment From the Date of Filing, 6-10-98. The trial court ruled interest on the $56,000 attorney fee, awarded under the mediation rule, would commence as of the date of rejection of mediation. Although Plaintiff did not address this aspect of interest computation in the Court of Appeals, the same statute and the same analysis controls this computation as controlled the "future damages" computation.

MCLA § 600.6013 provides, in pertinent part:

> (6) ...for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action **shall** be calculated at 6-month intervals **from the date of filing the complaint**....Interest under this subsection shall be calculated on the entire amount of the money judgment, **including attorney fees** and other costs..... [emphasis added].

The trial court's attorney fee award under then-MCR 2.403 (Mediation) should have been subject to interest from the date of filing the complaint. Plaintiff urges this Court to apply the same analysis as set forth in Issue I, and rule that interest on attorney fees should be calculated from the date the complaint was filed.

CONCLUSION AND RELIEF REQUESTED

Based on the foregoing argument and above-cited authorities, Plaintiff/Cross-Appellant Sharda Garg submits that interest should have been calculated from the date of filing the complaint on the $141,150 that the trial court attributed to "future damages," as well as on the attorney fee award of $56,000. Plaintiff/Cross-Appellant therefore urges this Honorable Court to reverse the lower courts' rulings on calculation of interest, and order that interest is to run from the date of commencement of the action on the entire award.

RESPECTFULLY SUBMITTED,

MONICA FARRIS LINKNER (P28147)
Attorney for Plaintiff-Appellee/
Cross-Appellant Sharda Garg
121 W. Washington St., Suite 300
Ann Arbor, MI 48104
734/214-0200

ALLYN CAROL RAVITZ (P19256)
Co-counsel for Plaintiff-Appellee/
Cross-Appellant Sharda Garg
PO Box 948
Walled Lake, MI 48390
248/960-9660

DATED: June 21, 2004

STATE OF MICHIGAN

IN THE SUPREME COURT

SHARDA GARG,

Plaintiff-Appellee/
Cross-Appellant,

vs.

MACOMB COUNTY COMMUNITY MENTAL HEALTH SERVICES, a governmental agency of MACOMB COUNTY,

Defendant-Appellant/
Cross-Appellee.

Supreme Court No: 121361 & (64)

Court of Appeals No: 223829

Macomb Circuit Court No: 95-3319 CK

MONICA FARRIS LINKNER (P28147)
Attorney for Plaintiff-Appellee/Cross-Appellant
121 W. Washington, Ste. 300
Ann Arbor, MI 48104
(734) 214-0200

ALLYN CAROL RAVITZ (P19256)
Attorney for Plaintiff
PO Box 948
Wolverine Lake, MI 48390-0948
(248) 960-0800

SUSAN HEALY ZITTERMAN (P33392)
KAREN BERKERY (P38698)
Kitch Drutchas Wagner Denardis & Valitutti, P.C.
Attorney for Defendant-Appellant-Cross Appellee
10th Floor, One Woodward Ave.
Detroit, MI 48226
(313) 965-7905

PROOF OF SERVICE

STATE OF MICHIGAN)
)ss
COUNTY OF WASHTENAW)

GAIL A. STEPHENS, being first duly sworn, deposes and says that on the 22ND day of June, 2004, she served a true and duplicate copy of the Plaintiff's Brief on Appeal as Cross-Appellant on Susan Healy Zitterman, Esq., and Karen Berkery, Esq., Kitch, Drutchas, Wagner, Denardis & Valitutti, 10th floor, One Woodward Ave.,

Detroit, MI 48226 , by placing same in a sealed envelope, properly addressed as above indicated, with postage fully prepaid thereon, and mailing in the U.S. mail at Ann Arbor, Michigan.

Gail A. Stephens

Subscribed and sworn to before me
this 23rd day of June, 2004.

Monica Farris Linkner, Notary Public
Washatenaw County, MI
My commission expires: 12/2/07